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New environmental and social standards at the World Bank and the AIIB

Consequences of the new standards for ensuring respect for human rights

Position Paper

The newly developed standards of the multilateral Asian Infrastructure Investment Bank (AIIB) and of the World Bank fall short in many respects of the human rights commitments that the Federal Government has imposed on itself. If Germany wishes to achieve the objectives it has set for itself, it will have to conduct its own human rights assessment of projects, and close monitoring of project implementation will be equally necessary.

The new standards make it more difficult to ensure that human rights are respected in several important respects. A comparison of the World Bank's old standards with the new standards adopted by the World Bank and the AIIB in 2016 makes this quite plain.¹ Three key aspects clearly illustrate this: the criteria for the use of country systems, the time at which risk assessments must be performed and the effectiveness of accountability procedures. With respect to the last two points in particular, opportunities for intervention by affected parties are curtailed considerably under the new standards.

Both banks permit borrowing countries to use their own environmental and social management systems. This is desirable from a developmental policy perspective and has been the policy up to now as well: systems have to be used if they are to be improved. However, the new standards lack binding criteria that would ensure that bank and country standards provide a comparable level

of protection. If countries are interested in high environmental and social standards, then it will be possible to remedy any deficiencies in dialogue and with support. If, however, countries are not interested in improving an inadequate system, this could result in a lowering of standards.

The environmental and social standards in question are:

- the World Bank's old standards, in force through 2017
- the standards of the Asian Infrastructure Investment Bank (AIIB), adopted in February 2016
- the World Bank's new standards, adopted in July 2016, to enter into force in 2018

Secondly, under the new standards, both those of the World Bank and those of the AIIB, it is possible for a project to be approved and its implementation begun before an assessment of the risks it involves is performed. If there are adverse impacts, this would make it more difficult for parties affected to take prompt countermeasures.

Thirdly: while the AIIB's grievance procedure has not even been set up yet, the scope for discretion allowed under the new World Bank standards is so great that affected parties will find it difficult to prove a violation before the Inspection Panel, the World Bank's accountability mechanism.

World Bank and AIIB establish parallel standards

The other new provisions are ambivalent from a human rights perspective as well. One positive note is the new standard on workers' rights, though it does erode the freedom of association that is binding for members of the International Labour Organization (ILO) by making it subject to the law of the country in question, despite the fact that severe restrictions on the freedom of association exist in many countries. In addition, while the two new standards expressly prohibit discrimination towards individuals in connection with the implementation of projects, they neglect to cite the entire spectrum of human rights categories of discrimination. Thus both banks have missed the opportunity to flesh out the central pledge of the 2030 Agenda for Sustainable Development to "Leave no one behind" for the development banks.

Nowhere do the standards make explicit reference to the UN human rights treaties, the ILO core labour standards, the COP21 Paris Agreement or the 2030 Agenda, all of which impose obligations on states. Moreover these obligations are reflected only partially in the content of the standards. Rather than aligning their standards with these obligations on the part of their borrowers, the World Bank and the AIIB are creating parallel standards, a circumstance which could undermine the existing treaty obligations and political agreements.

There is no "rapid development"

The understanding of development that underlies the new standards is different as well: The President of AIIB has clearly indicated that in his understanding the best guarantee for development is "rapid infrastructure" expansion without tedious assessments, in conjunction with the willingness to resettle as a "service in the public interest". Population participation and careful risk assessments cost money and time and, according to this view, are seen more as impediments to development and competition.

This is completely at odds with the 2030 Agenda, adopted only a few months before the standards themselves, in which the international community committed itself to adopting human rights based approach to development planning that incorporates broad, inclusive participation. The 2030

Agenda is the product of bitter lessons learned in the field of development policy: infrastructure alone does not lead to "development", economic growth does not automatically reach all strata of society when the target groups have no rights and no prospects and cannot participate in decision making. Many governments have already been restricting the scope for civil society activity. It is disturbing that this trend is now being reflected in the standards of multilateral development banks as well.

Everything hinges on the implementation

Flexibility and "adaptive management" are key terms for the new standards. In a nutshell, this means: rather than thoroughly assessing projects prior to implementation with an eye towards all possible developments, the banks should assess risks flexibly during project implementation as soon as they manifest themselves and are deemed relevant. This approach can contribute towards cost savings and allow risks to be addressed in a targeted manner. However it assumes that sufficient resources are available for project oversight – and that oversight mechanisms that are independent of the borrowing countries are in place.

Thus environmental and social standards are only one of the prerequisites for effective protection against adverse social and environmental impacts. Given the broad scope for discretion allowed under the new bank standards, when borrowing countries are using their own systems everything hinges on the effective oversight of the borrowing countries by the World Bank and the AIIB. It remains unclear how the development banks intend to handle this. Just last year, the World Bank was forced to acknowledge serious failings relating to resettlement issues: it did not know how many people had been displaced by the development projects it had financed. How the World Bank intends to verify compliance with the new, far less specific standards effectively remains unclear; the implementation guidelines have not yet been drawn up and recent organisational reforms still have to stand the test in practice.

Race to the bottom?

Although development banks cooperate on development projects, they are also in competition with one another at times: all banks need clients.

With the weakening of its old standards, it appears that the World Bank seeks to better position itself to compete for clients with the AIIB. Whether the World Bank will come out ahead in the battle for financial resources remains to be seen. Meanwhile, though, it is in danger of losing of its status as a pioneer in the development of strong environmental and social standards.

Recommendations

The new standards that the World Bank and the AIIB have introduced have the potential to mitigate risks effectively, but they also run the risk of weakening environmental and social standards and cutting off important avenues for pursuing grievances for persons affected by development projects. Due to the human rights risks and the still uncertain level of implementation of the new standards, it is imperative that Germany base its activities in multilateral banks closely on its human rights obligations.

- 1 As the new World Bank and AIIB standards fall short of what is required of Germany by its human rights obligations, Germany must perform its own advance human rights risk assessment, identify projects with high risks and insist within the banks' decision-making bodies on detailed reporting on the part of the banks. This may also require that Germany play a more active and different role within those bodies: According to the response provided by the Federal Ministry for Economic Cooperation and Development (BMZ) to an inquiry from the German Institute for Human Rights, Germany

abstained from voting on only four projects at the Boards of Directors of the World Bank period from January 2015 to April 2016.² To put this in context, 463 financing decisions were made by the World Bank in 2015. The BMZ made no response as to which projects Germany had called for a human rights assessment.

- 2 Greater transparency in Germany's decision-making behaviour is also necessary: unlike the USA, which regularly documents its actions in multilateral financial institutions,³ Germany does no such thing. The Bundestag, for its part, should invite the German Executive Director to public hearings in the Bundestag. In addition, it should insist on regular, publically accessible reporting on all human rights assessments carried out, decision-making behaviour and positioning.
- 3 During visits by parliamentarians to other countries, Members of the Bundestag should visit and report not only bilateral development projects but also on projects of the AIIB and other development and investment banks.

1 The Bundestag's Wissenschaftlicher Dienst (research service) has issued a report comparing the revised World Bank standards with the new AIIB standard: www.bundestag.de/blob/436482/216490962b566f7bdf5eef0b046389e5/wd-2-091-16-pdf-data.pdf (retrieved on 14 Sep. 2016).

2 Information as provided in the BMZ's response of 3 May 2016 to an inquiry from the German Institute for Human Rights of 4 April 2016.

3 Website of the U.S. Department of the Treasury, <https://www.treasury.gov/resource-center/international/development-banks/Pages/index.aspx> (retrieved on 14 Sep. 2016).

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